

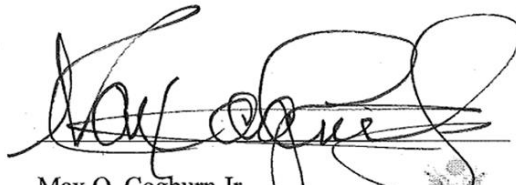
require any review at all of issues that are not the subject of an objection. Thomas v. Arn, 474 U.S. 140, 149 (1985); Camby v. Davis, 718 F.2d at 200. Nonetheless, a district judge is responsible for the final determination and outcome of the case, and accordingly the court has conducted a careful review of the magistrate judge's recommendation.

After such careful review, the court determines that the recommendation of the magistrate judge is fully consistent with and supported by current law. Further, the brief factual background and recitation of issues is supported by the applicable pleadings. Based on such determinations, the court will fully affirm the Memorandum and Recommendation and grant relief in accordance therewith. In so finding, the court notes that the Magistrate Judge, in conformity with Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), Judge Howell advised defendant of his right to respond to the Motion to Dismiss, how to respond to the Motion to Dismiss, and allowed him additional time within which to file a response. Review of the court's docket reveal that such Order was mailed to plaintiff and not returned. No response was filed. Further, Judge Howell properly advised the pro se litigant in his M&R of his right to object and the time within which to do so. Again, the Clerk of Court properly mailed that Order to plaintiff, but such Order was returned as undeliverable "unable to forward." Finding that plaintiff was likely aware of the government's motion and the court's instructions on responding to that motion, it appears that plaintiff has abandoned this litigation. In an abundance of caution, the court will dismiss this action without prejudice as it appears that plaintiff's Rule 9(j) failure could, theoretically, be cured and a new action filed.

ORDER

IT IS, THEREFORE, ORDERED that the Memorandum and Recommendation (#9) is **AFFIRMED**, and the government's Motion to Substitute party and Dismiss are **ALLOWED**, the United States of America is **SUBSTITUTED** for the named defendants as the defendant herein, and this action is **DISMISSED** without prejudice.

Signed: October 28, 2014



Max O. Cogburn Jr.
United States District Judge